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Senate Engrossed

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

# SENATE BILL 1167

AN ACT

AMENDING SECTION 36-2934.01, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2934.01, Arizona Revised Statutes, is amended to  
3 read:

4 36-2934.01. Creation of trusts; eligibility for the system;  
5 share of cost

6 A. The administration has sole authority to qualify any trusts that  
7 are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social  
8 security act and shall require that the trustee provide the following  
9 information and assurances when the trustee submits trust documents to the  
10 administration for approval:

11 1. Specific language that protects the state's beneficiary interest in  
12 the trust and that names the administration **OR THE STATE MEDICAID AGENCY** as  
13 the primary beneficiary of the trust if the trust is terminated before or on  
14 the death of the member. The trust document shall state that the trustee  
15 shall pay on a monthly basis the share of cost amount established by the  
16 posteligibility treatment of income determination pursuant to subsection D of  
17 this section.

18 2. A provision that requires the direct deposit of all income assigned  
19 to the trust by the grantor, when legally permissible, into an account titled  
20 to the trust.

21 3. A detailed description of how the trust funds will be administered  
22 and disbursed. The trustee shall submit the description at the same time  
23 that the trustee submits the trust document to the administration for review.  
24 The administration shall review the planned disbursements or plan approved by  
25 the probate court and render a decision on the appropriateness of the  
26 disbursements or plan within ~~ten working days~~ **THE TIME FRAMES ESTABLISHED BY**  
27 **FEDERAL LAW FOR PROCESSING APPLICATIONS FOR MEDICAL ASSISTANCE. THE**  
28 **ADMINISTRATION MAY EXTEND THIS LIMIT TO ENABLE A TRUSTEE TO AMEND A TRUST OR**  
29 **TO PROVIDE ADDITIONAL INFORMATION REQUESTED BY THE ADMINISTRATION.** The  
30 trustee shall report to the administration any new trust funding or  
31 modifications to the planned disbursements from the trust no less than  
32 forty-five days before the intended action or change by the trustee. Under  
33 extenuating circumstances, the trustee may forgo the forty-five day reporting  
34 requirement, and provide notice to the administration within thirty days  
35 from the date of disbursement. If the administration determines that the  
36 disbursement was not appropriate, or that any other provisions of the trust  
37 or this section have been violated, the administration shall consider the  
38 trust in accordance with subsection ~~D~~ **F** of this section. The trustee may  
39 appeal this decision, but the provisions described in ~~subsection H~~  
40 **SUBSECTIONS I AND J** of this section shall be applied if the administration's  
41 action is affirmed. On request of the administration, the trustee shall  
42 provide verification of how the funds were administered.

1           4. A statement signed by the trustee acknowledging that an adverse  
2 action may be taken against the member's eligibility for the system if the  
3 trustee improperly violates the terms of the trust or the requirements of  
4 this section or if the trustee takes any action that limits the  
5 administration's beneficiary interest in the trust.

6           5. Specific language that protects the trust for the benefit of the  
7 trust beneficiary. The trust document shall state that disbursements shall  
8 not be made for other than those purposes allowed pursuant to this section.

9           B. For a trust that qualifies pursuant to subsection A of this  
10 section, the trustee shall not make any disbursements from the trust other  
11 than for the following:

12           1. Reasonable legal and professional expenses related to the trust  
13 including:

14           (a) Trust taxes.

15           (b) Trust investment fees.

16           (c) Reasonable professional expenses, including trustee, accounting  
17 and attorney fees related to THE ADMINISTRATION OF the trust.

18           2. The posteligibility share of cost as computed pursuant to section  
19 36-2932.

20           3. FOR TRUSTS CREATED PURSUANT TO SECTION 1917(d)(4)(B) OF THE SOCIAL  
21 SECURITY ACT, A DISBURSEMENT TO THE BENEFICIARY EQUAL TO THE PERSONAL NEEDS  
22 ALLOWANCE AS COMPUTED PURSUANT TO SECTION 36-2932.

23           ~~3.~~ 4. Health insurance premiums, medically necessary medical expenses  
24 and special medical needs of the beneficiary including:

25           (a) Expenses required to make the home accessible to the person.

26           (b) The purchase and maintenance of a specially equipped vehicle  
27 TITLED TO THE TRUST OR TO THE BENEFICIARY WITH A LIEN AGAINST THE VEHICLE  
28 HELD BY THE TRUST IN AN AMOUNT EQUAL TO THE CURRENT MARKET VALUE OF THE  
29 VEHICLE.

30           (c) Durable medical equipment.

31           (d) Over-the-counter supplies and medications, including diapers,  
32 lotions and cleansing wipes.

33           (e) Personal care services that are determined to be medically  
34 necessary by the program contractor and that are provided by a person who is  
35 registered by the administration to provide the services and who is not a  
36 financially responsible relative of the beneficiary. FOR THE PURPOSES OF  
37 THIS SUBDIVISION, "FINANCIALLY RESPONSIBLE RELATIVE" MEANS THE SPOUSE OF THE  
38 BENEFICIARY OR, IF THE BENEFICIARY IS A CHILD UNDER EIGHTEEN YEARS OF AGE,  
39 THE PARENT OF THE BENEFICIARY.

40           ~~4.~~ 5. Maintenance payments for the spouse or family in accordance  
41 with 42 United States Code section 1396R-5(d)(1) and (2) and section 36-2932,  
42 subsection L.

43           6. GUARDIANSHIP AND CONSERVATORSHIP FEES FOR THE TRUST BENEFICIARY  
44 BASED ON THE FAIR MARKET VALUE OF THE SERVICES PROVIDED.

1       ~~5-~~ 7. ~~Other~~ THE FOLLOWING expenses for the benefit of the  
2 beneficiary, ~~including~~ EXCLUDING GIFTS TO, PAYMENTS FOR OR LOANS TO OTHER  
3 PERSONS, WHETHER THESE ARE IN CASH OR IN KIND:

4       (a) Entertainment, educational or vocational NEEDS OR items that are  
5 consistent with the person's ability to use these items.

6       (b) Other expenses that are individually approved by the director.

7       (c) Living expenses for food, clothing and shelter. IF HOME PROPERTY  
8 OR OTHER REAL PROPERTY IS PURCHASED BY THE TRUST IT MUST BE TITLED TO THE  
9 TRUST.

10       (d) INCOME TAXES OWED ON INCOME FROM TRUST INVESTMENTS OR ON INCOME OF  
11 THE BENEFICIARY THAT IS ASSIGNED TO THE TRUST WHEN AN ACTUAL TAX LIABILITY IS  
12 ESTABLISHED.

13       (e) PROVISION FOR BURIAL EXPENSES SHALL BE MADE BY ONE OF THE  
14 FOLLOWING METHODS:

15       (i) PURCHASE OF A PREPAID BURIAL PLAN FUNDED BY AN IRREVOCABLE LIFE  
16 INSURANCE POLICY.

17       (ii) PURCHASE OF LIFE INSURANCE TO FUND A BURIAL PLAN FOR THE  
18 BENEFICIARY WITH A FACE VALUE THAT DOES NOT EXCEED ONE THOUSAND FIVE HUNDRED  
19 DOLLARS AFTER ALLOWING DEDUCTIONS FOR BURIAL PLOT ITEMS AS DEFINED BY THE  
20 ADMINISTRATION.

21       (iii) FUNDING A BURIAL FUND ACCOUNT IN AN AMOUNT NOT TO EXCEED ONE  
22 THOUSAND FIVE HUNDRED DOLLARS.

23       (f) TRAVEL EXPENSES FOR A COMPANION, OTHER THAN A BENEFICIARY'S  
24 FINANCIALLY RESPONSIBLE RELATIVE, WHEN A COMPANION IS REQUIRED TO ENABLE THE  
25 BENEFICIARY TO TRAVEL FOR NONMEDICAL REASONS.

26       C. For trusts that qualify pursuant to subsection A of this section,  
27 the administration shall consider only the person's proportionate share of  
28 expenses as for the benefit of the trust beneficiary if these expenses also  
29 benefit others.

30       D. For trusts that are created pursuant to section 1917(d)(4)(A), (B)  
31 and (C) of the social security act, the administration shall require that the  
32 ~~post-eligibility~~ POSTELIGIBILITY treatment of income that is determined  
33 pursuant to section 36-2932 shall include the income assigned to the trust  
34 and any other countable income received by the member, excluding interest and  
35 dividends earned by the trust corpus and added to the principal. Each month  
36 the administration shall count for income eligibility purposes any  
37 disbursements made to the beneficiary and any payments made on behalf of the  
38 beneficiary for food, ~~clothing~~ or shelter. THE ADMINISTRATION SHALL COUNT  
39 DISBURSEMENTS ISSUED FOR THE PERSONAL NEEDS ALLOWANCE PURSUANT TO SUBSECTION  
40 B, PARAGRAPH 3 OF THIS SECTION AS DISBURSEMENTS FOR FOOD OR SHELTER.

41       E. In order for a trust that is created pursuant to section  
42 1917(d)(4)(B) of the social security act to be considered under this section,  
43 the sum of the individual's countable nontrust income and the income assigned  
44 to the trust, excluding interest and dividends earned by the trust corpus and

1 added to the principal shall be equal to or less than the private pay rate  
2 established in the state plan.

3 F. For revocable or irrevocable trusts that are created pursuant to  
4 section 1917(d)(3)(A) or (B) of the social security act, the administration  
5 shall include the income that is received by the trust, excluding interest  
6 and dividends earned by the trust corpus and added to the principal or that  
7 is disbursed from the trust, whichever is greater, for both income  
8 eligibility calculations under section 36-2934 and ~~post-eligibility~~  
9 ~~POSTELIGIBILITY~~ of income under section 36-2932. In determining eligibility  
10 for the system, the administration shall consider payments from the trust  
11 regardless of the purpose for which the payment is made.

12 G. Notwithstanding this section, a trust that is established before  
13 August 11, 1993 shall be evaluated in accordance with the provisions  
14 contained in the state plan.

15 H. If the administration determines that the trustee did not report  
16 changes in the amount of trust income or disbursements from the trust to the  
17 administration in the time frame and manner specified in subsection A of this  
18 section, the administration shall notify the member of the noncompliance and  
19 shall prospectively apply the adverse action that would have resulted if the  
20 change had been reported in a timely manner. If benefits for the system are  
21 continued by the administration pending a decision by the director after a  
22 hearing on a proposed adverse action that results from trust income or  
23 disbursements and the director upholds the administration, the administration  
24 shall apply the adverse action on a prospective basis.

25 I. THE ADMINISTRATION SHALL CONSIDER TRUST DISBURSEMENTS ISSUED IN  
26 VIOLATION OF THIS SECTION AS A TRANSFER WITHOUT FAIR CONSIDERATION.

27 J. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE IS IN VIOLATION  
28 OF THIS SECTION OR THE TERMS OF A NEW OR EXISTING TRUST, THE ADMINISTRATION  
29 SHALL CONSIDER ALL TRUST ASSETS HELD IN THE TRUST AND INCOME HELD IN OR  
30 PRODUCED BY THE TRUST, AVAILABLE TO THE BENEFICIARY UNDER 42 UNITED STATES  
31 CODE SECTION 1396p(d)(3) UNTIL THE TRUSTEE CORRECTS THE VIOLATION.

32 Sec. 2. ~~Exemption from rule making~~

33 For the purposes of this act, the Arizona health care cost containment  
34 system administration is exempt from the rule making requirements of title  
35 41, chapter 6, Arizona Revised Statutes, for one year after the effective  
36 date of this act.